

HOUSE BILL No. 1020

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-9-27.4.

Synopsis: Removal of obstructions from streams. Amends the law providing for the removal of obstructions from mutual drains and natural surface watercourses to make the law apply also to the removal of obstructions from streams. Provides that the owner of a tract of land that is adversely affected by an obstruction in a stream may petition the drainage board of the county in which the obstruction is located for the removal of the obstruction, even if the owner's tract of land is not located in the county in which the obstruction is located. Provides for an investigation by the county surveyor in response to the petition. Requires the drainage board to order the removal of the obstruction if it finds that removal of the obstruction: (1) will promote better drainage of the petitioner's tract of land or alleviate an adverse effect of the obstruction upon the petitioner's tract of land; and (2) will not cause unreasonable damage to the owners of the tract of land on which the obstruction is located. Provides for the cost of removing the obstruction to be paid by the owners of all tracts of land that are located in the county over which the drainage board has jurisdiction and are benefited by the stream. Provides for judicial review of the drainage board's order.

Effective: July 1, 2015.

Bacon

January 6, 2015, read first time and referred to Committee on Local Government.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1020

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-9-27.4-0.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. For purposes of this chapter,**
4 **a tract of land is "adversely affected" by an obstruction if, as a**
5 **result of the obstruction, there is a significant reduction in:**
6 **(1) the reasonably estimated value of the tract of land; or**
7 **(2) the quality or quantity of the agricultural products or**
8 **other products of the tract of land.**
9 SECTION 2. IC 36-9-27.4-4 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) As used in this
11 chapter, "obstruction" means a condition that:
12 **(1) exists within or near a drain, natural surface watercourse, or**
13 **stream; and**
14 **(2) prevents or significantly impedes the flow of water through**
15 **the drain, natural surface watercourse, or stream.**



(b) The term includes the following:

(1) The presence of:

(A) one (1) or more objects inside or near a drain, **natural surface watercourse, or stream;**

(B) a quantity of materials inside or near a drain, **natural surface watercourse, or stream;** or

(C) damage to a drain, **natural surface watercourse, or stream;**

that prevents, ~~or~~ significantly impedes, **or alters** the flow of water. ~~through the drain.~~

(2) Obstructions that:

(A) are created intentionally; and

(B) occur naturally or are created unintentionally.

SECTION 3. IC 36-9-27.4-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 7.5. As used in this chapter, "stream" means a natural or altered river, creek, slough, watercourse, or artificial channel that has:**

(1) definable banks and a bed capable of conducting defined runoff; and

(2) visible evidence of the flow or occurrence of water.

SECTION 4. IC 36-9-27.4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 9. (a) If:**

(1) a person who ~~owns~~ **is an owner of** a tract of land seeks the removal of an obstruction from a drain, ~~or~~ natural surface watercourse, **or stream** located outside the person's tract in order to:

(A) promote better drainage of the person's tract; or

(B) alleviate an adverse effect of the obstruction upon the person's tract; and

(2) the owner of the land on which the obstruction is located, upon request, does not remove the obstruction;

the person seeking the removal of the obstruction may file a petition under this chapter asking the drainage board in the county in which the obstruction is located to remove, or authorize or order the removal of, the obstruction under this chapter.

(b) A person who is an owner of a tract of land referred to in subsection (a)(1) may file a petition with a drainage board under this section regardless of whether the person's tract of land is located:

(1) in the county over which the drainage board has jurisdiction; or



(2) in another county.

SECTION 5. IC 36-9-27.4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. A petition filed by a person described in section ~~9(1)~~ **9(a)(1)** of this chapter must include the following:

(1) A general description of the tract of land ~~owned by the petitioner.~~ **referred to in section 9(a)(1) of this chapter.**

(2) A general explanation of the need for the removal of the obstruction, **including an explanation of how, in the petitioner's belief, the removal of the obstruction will:**

(A) promote better drainage of the petitioner's tract of land; or

(B) alleviate an adverse effect of the obstruction upon the petitioner's tract of land.

(3) A general description of the site **believed by the petitioner to be the location** of the obstruction.

SECTION 6. IC 36-9-27.4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) If a petition filed under this chapter alleges the obstruction of:

(1) a drain; ~~or~~

(2) a natural surface watercourse; **or**

(3) a stream;

the county surveyor of the county in which the obstruction is alleged to exist shall promptly investigate whether the obstruction exists.

(b) If the county surveyor, upon investigation, finds an existing obstruction in a drain, ~~or~~ natural surface watercourse, **or stream** in the location alleged in the petition, the county surveyor shall report the existence of the obstruction to the drainage board.

(c) Upon receiving a report from the county surveyor under subsection (b), the drainage board shall:

(1) set a date for a hearing on the petition; and

(2) serve notice of the hearing on each owner of the land on which the obstruction exists who can be identified in the records of the county recorder.

(d) The hearing must be held at least thirty (30) days but less than ninety (90) days after the date of the filing of the petition.

(e) Notice of a hearing must be mailed to each respondent with return receipt requested.

SECTION 7. IC 36-9-27.4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. (a) If, after a hearing held under this chapter, the drainage board finds that:

(1) the obstruction of a drain, ~~or~~ a natural surface watercourse, **or**



1 **a stream** that is alleged in the petition exists; and

2 (2) the removal of the obstruction: ~~will:~~

3 (A) **will:**

4 (i) promote better drainage of the petitioner's **tract of land;**

5 **or**

6 (ii) **alleviate an adverse effect of the obstruction upon the**
7 **petitioner's tract of land;** and

8 (B) **will** not cause unreasonable damage to the land of the
9 respondents;

10 the drainage board shall find for the petitioner.

11 (b) If, after a hearing held under this chapter, the drainage board is
12 unable to make the findings described in subsection (a), the drainage
13 board shall deny the petition.

14 SECTION 8. IC 36-9-27.4-15 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. If the drainage
16 board finds for the petitioner under section 14(a) of this chapter, the
17 board shall determine, based upon a preponderance of the evidence,
18 whether the obstruction of the drain, ~~or~~ natural surface watercourse, **or**
19 **stream** was created intentionally by any of the respondents.

20 SECTION 9. IC 36-9-27.4-16 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. (a) If the drainage
22 board: ~~finds:~~

23 (1) **finds** for the petitioner under section 14(a) of this chapter; and

24 (2) **finds** under section 15 of this chapter that the obstruction of
25 the drain, ~~or~~ natural surface watercourse, **or stream** was created
26 intentionally by ~~at least~~ one (1) **or more** of the respondents;

27 the drainage board shall enter an order directing the respondents **found**
28 **to have intentionally created the obstruction** to remove the
29 obstruction at their own expense, or directing the county surveyor to
30 remove the obstruction at the expense of ~~the~~ **those** respondents.

31 (b) A respondent against whom an order is entered under subsection
32 (a) is subject to an action under section 22 of this chapter if the
33 respondent fails to pay the amount for which the respondent is
34 responsible under the order.

35 SECTION 10. IC 36-9-27.4-17 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 17. If the drainage
37 board:

38 (1) finds for the petitioner under section 14(a) of this chapter; and

39 (2) does not find under section 15 of this chapter that the
40 obstruction of the drain, ~~or a~~ natural surface watercourse, **or**
41 **stream** was created intentionally by any of the respondents;

42 the drainage board shall enter an order under section 18 or 19 of this



chapter concerning the removal of the obstruction.

SECTION 11. IC 36-9-27.4-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. (a) If:

(1) a petition filed under this chapter concerns a drain **or stream**; and

(2) the drainage board:

(A) finds for the petitioner under section 14(a) of this chapter;

but

(B) does not find under section 15 of this chapter that the obstruction of the drain **or stream** was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

(1) authorizing the petitioner to remove the obstruction;

(2) authorizing the respondents to remove the obstruction;

(3) directing the county surveyor to remove the obstruction; or

(4) directing that the obstruction be removed through the joint efforts of at least two (2) of the persons referred to in this subsection.

(c) If an order is issued under subsection (b), the costs of removing the obstruction must be borne by the owners of all **of** the tracts of land that are:

(1) **located in the county over which the drainage board has jurisdiction; and**

(2) benefited by the drain **or stream**.

(d) The order of the board must do the following:

(1) Identify all tracts of land that are benefited by the drain **or stream**.

(2) Identify the owners of the tracts of land referred to in subdivision (1):

(A) who are known to the drainage board; or

(B) whose identity can be determined through the records of the county auditor.

(3) Apportion the costs of removing the obstruction among the tracts of land that are ~~benefited by the drain~~, **referred to in subsection (c)**, assigning to each tract a certain percentage of the total costs.

(4) Order the owners of each tract of land referred to in ~~subdivision (1)~~ **subsection (c)** to pay an amount equal to the product of the total costs of removing the obstruction multiplied by the percentage assigned to the tract under subdivision (3).



(~~d~~) (e) The percentage of the total costs assigned to a tract under subsection (~~c~~)(3) (**d**)(3) must correspond to the ratio of the total length of:

(1) the drain; or

(2) the part of the stream located within the county; to the length of the particular segment of the drain or stream that benefits the tract.

(f) The order of the board may offset, against the part of the costs assigned under subsection (d)(3) to the tract of land on which the obstruction is located, the monetary value of the harm and inconvenience that the owners of the tract will incur as a result of the removal of the obstruction.

SECTION 12. IC 36-9-27.4-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 23. (a) If the drainage board finds for a petitioner after a hearing held under this chapter, a respondent may file an action in the circuit or superior court of the county in which the alleged obstruction exists seeking to have the order entered by the drainage board vacated or modified.

(b) An action filed under subsection (a) must be based on at least one (1) of the following assertions by the respondent:

(1) The drainage board lacked authority to act under this chapter.

(2) The drainage board erred in making the findings described in section 14(a) of this chapter.

(3) The respondent should have been awarded compensation under section 18(d) this chapter or an offset against costs under section 19(f) of this chapter for harm and inconvenience, or the amount awarded to the respondent or offset against the respondent's costs for harm and inconvenience is insufficient.

(4) The drainage board did not follow the procedure required by this chapter.

SECTION 13. IC 36-9-27.4-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 24. (a) In an action filed under section 23 of this chapter, the court:

(1) shall enter an order vacating or modifying the order of the drainage board directing the county surveyor to remove the obstruction; and

(2) may issue an injunction against the removal of the obstruction; if the court makes a finding under subsection (b).

(b) The court is required or authorized to act under subsection (a) if the court finds that the drainage board:

(1) was clearly in error in making its findings under section 14(a) of this chapter with respect to the alleged obstruction; or



(2) exceeded its authority or discretion under the law:

(A) in authorizing the removal of the obstruction; **or**

(B) in:

(i) failing to make an order; **or**

(ii) ordering an insufficient amount;

of compensation under section 18(d) of this chapter or of an offset against costs under section 19(f) of this chapter for harm and inconvenience that the respondent will incur as a result of the removal of the obstruction.

SECTION 14. IC 36-9-27.4-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 25. (a) For the purposes of this chapter:

(1) a county surveyor;

(2) a member of a drainage board; **or**

(3) an authorized representative of a county surveyor or drainage board;

has a right of entry over and upon a tract of land containing a drain, ~~or~~ natural surface watercourse, **or stream** that is the subject of a petition filed under this chapter.

(b) The right of entry granted by this section is limited to the land lying within seventy-five (75) feet of the drain, ~~or~~ natural surface watercourse, **or stream**. The seventy-five (75) feet must be measured at right angles to:

(1) the center line of any tiled drain; ~~and~~

(2) the top edge of each bank of an open drain **or stream**; and

(3) the edge of any natural surface watercourse;

as determined by the county surveyor.

(c) A person exercising a right of entry under this section shall, to the extent possible, use due care to avoid damage to:

(1) crops, fences, buildings, and other structures located outside the right-of-way; and

(2) crops and approved structures located inside the right-of-way.

(d) Before exercising a right of entry under this section, an individual must give oral or written notice of the entry on the land to the property owner of record. The notice must state the purpose for the entry.

(e) A right of entry under this section is not criminal trespass under IC 35-43-2-2, and an individual exercising a right of entry under this section may not be arrested or prosecuted for criminal trespass under IC 35-43-2-2.

